

## **Exhibit 11**

**MINTZ LEVIN**

Robert I. Bodian | 212 692 6726 | rbodian@mintz.com

Chrysler Center  
666 Third Avenue  
New York, NY 10017  
212-935-3000  
212-983-3115 fax  
www.mintz.com**fax transmittal****FROM:****Name** Dominic J. Picca, Esq.**Date** August 17, 2010**# of Pages** 4**To:**

<b>Name</b>	<b>Company</b>	<b>Business#</b>	<b>Fax #</b>
Hon. Paul G. Gardephe	United States District Court, S.D.N.Y.		212-805-7986
Kimo S. Peluso, Esq.			212-790-4545
Toby S. Soli, Esq.			212-801-6400

**Comments:**

Please call us at 212-935-3000 if you experience any problems.

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**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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# MINTZ LEVIN

Dominic J. Picca | 212 692 6859 | dpicca@mintz.com

Chrysler Center  
666 Third Avenue  
New York, NY 10017  
212-935-3000  
212-983-3115 fax  
www.mintz.com

August 17, 2010

## BY HAND

Honorable Deborah A. Batts  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 2510  
New York, NY 10007

## BY FACSIMILE

Honorable Paul G. Gardephe  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 920  
New York, NY 10007  
Fax: 212-805-7986

Re: *The Seaport Group LLC v. Dale Earnhardt, Inc.*, case no. 10-cv-1599 (DAB)  
*Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc.*, case no. 10-cv-5910  
(PGG)

Dear Judges Batts & Gardephe:

This office represents the defendant Dale Earnhardt, Inc. ("DEI") in both of the above-referenced actions. In accordance with Judge Batts' Individual Practice Rule II(B)(1) and Judge Gardephe's Individual Practice Rule 3(A), I write to request a pre-motion conference to seek permission to file a pre-discovery motion for the consolidation, in accordance with Federal Rule of Civil Procedure 42(a), of *Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc.* (case no. 10-cv-5910), over which Judge Gardephe presides, with the earlier-filed related case over which Judge Batts presides, *The Seaport Group LLC v. Dale Earnhardt, Inc.* (case no. 10-cv-1599). This motion is not on consent.

Presently pending before the Court are two related actions -- one brought by The Seaport Group LLC ("Seaport") and the other by Deutsche Bank Securities Inc. ("Deutsche Bank") (together with Seaport, "the Plaintiffs") -- in which the Plaintiffs allege that DEI separately agreed to sell each Plaintiff DEI's pending claim in the General Motors bankruptcy case, but later failed to do so. DEI seeks to move, in accordance with to Rule 42(a), for consolidation of the actions. It is appropriate to consolidate both actions because they allege the same facts of wrongdoing against the same defendant regarding the same trade claim and assert similar contractual claims seeking similar relief.

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Generally, Seaport's complaint alleges that "[a]fter DEI signed a binding contract to sell its claim [pending in the General Motors bankruptcy action] to Seaport, the value of the claim increased dramatically, and DEI refused to honor the deal."<sup>1</sup> Seaport seeks a declaration that its alleged contract with DEI is binding as well as specific performance or money damages due to DEI's alleged breaches of contract and of the implied covenant of good faith and fair dealing.<sup>2</sup> Like Seaport, Deutsche Bank also alleges that "DEI signed a binding contract to sell its claim to Deutsche Bank and, after entering into that contract, DEI breached that contract by refusing to assign that claim to Deutsche Bank."<sup>3</sup> Also like Seaport, Deutsche Bank seeks money damages due to DEI's alleged breaches of contract and of the implied covenant of good faith and fair dealing.<sup>4</sup>

Rule 42 consolidation is appropriate when the actions involve common questions of law or fact.<sup>5</sup> "In general, courts have broad discretion to determine whether consolidation is appropriate and . . . have taken the view that considerations of judicial economy favor consolidation. . . . The chief advantage of consolidation is that it avoids the waste associated with duplicative discovery and multiple trials and the danger of inconsistent verdicts. . . . In deciding whether consolidation is proper, the court must balance the interest of judicial convenience against any delay, confusion, or prejudice that might result from such consolidation."<sup>6</sup>

Consolidation of the Plaintiffs' related actions is judicially economical because they both involve breaches of alleged agreements with the same defendant, DEI, to purchase the very same claim. Moreover, these actions, if left separate, are bound to duplicate discovery and will ultimately require multiple trials to resolve the same or similar underlying factual and legal issues. Accordingly, DEI requests a pre-motion conference seeking permission to file a pre-discovery motion for consolidation of these actions.

Additionally, the initial pre-trial conference with Judge Batts in the *Seaport* action is set for August 27, 2010. DEI requests an adjournment of that conference to ensure that, in the event that the Courts grant consolidation, all parties who will need to be present for the scheduling conference are able to attend.

<sup>1</sup> See Complaint, *The Seaport Group LLC v. Dale Earnhardt, Inc.*, case no. 10-cv-1599 (DAB) ("the Seaport Complaint"), ¶ 1.

<sup>2</sup> Seaport Complaint, ¶¶ 1, 30-59.

<sup>3</sup> See Complaint, *Deutsche Bank Securities Inc. v. Dale Earnhardt, Inc.*, case no. 10-cv-5910 (PGG) ("the Deutsche Bank Complaint"), ¶ 1.

<sup>4</sup> Deutsche Bank Complaint, ¶¶ 1, 17-31.

<sup>5</sup> Fed. R. Civ. P. 42(a).

<sup>6</sup> *Internet Law Library, Inc. v. Southridge Capital Management, LLC*, 208 F.R.D. 59, 61 (S.D.N.Y. 2002) (citing *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284-85 (2d Cir.1990)) (citations, punctuation omitted) (Carter, J.).

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Honorable Paul G. Gardephe  
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Respectfully submitted,



Dominic J. Picca (Bar No. 2376)

cc: Kimo S. Peluso, Esq. (by fax)  
Toby S. Soli, Esq. (by fax)

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